

# Customs Bulletin

Regulations, Rulings, Decisions, and Notices  
concerning Customs and related matters



## and Decisions

of the United States Court of Customs and  
Patent Appeals and the United States  
Customs Court

Vol. 13

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JANUARY 10, 1979

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No. 2

*This issue contains*

T.D. 79-5 and 79-6

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Int'l Trade Commission Notices

DEPARTMENT OF THE TREASURY  
U.S. Customs Service

## NOTICE

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# U.S. Customs Service

## *Treasury Decisions*

(T.D. 79-5)

### Vessels in Foreign and Domestic Trades

Delay in effective date for mandatory use of cargo declaration forms in connection with vessel arrivals or departures

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Delay in effective date for use of cargo declaration forms.

SUMMARY: Treasury Decision 77-255 provided for the mandatory use as of September 1, 1978, of newly developed cargo declaration forms in connection with vessel arrivals or departures. Because a number of ocean carriers advised Customs that mandatory use of the forms as of September 1, 1978, would work a hardship on them, Customs agreed to delay the mandatory effective date until January 1, 1979. This document extends the time for mandatory use of these forms until April 1, 1979, to allow time for consideration of a possible amendment to the Customs Regulations to simplify procedures relating to the reporting of bill of lading numbers of containerized cargo on one of the new forms and to give carriers additional time to comply with the new requirements.

EFFECTIVE DATE: The use of the cargo declaration, Customs form 1302, and the cargo declaration outward with commercial forms, Customs form 1302-A, shall be mandatory as of April 1, 1979.

FOR FURTHER INFORMATION CONTACT: Donald H. Reusch, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-5706.

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

Treasury Decision 77-255, published in the Federal Register on October 25, 1977 (42 F.R. 56317), amended part 4, Customs Regula-

tions (19 CFR pt. 4), to provide for newly developed cargo declaration forms in connection with vessel arrivals or departures and to establish procedures for their use.

The forms, the cargo declaration, Customs form 1302, and the cargo declaration outward with commercial forms, Customs form 1302-A, follow a format developed by the Intergovernmental Maritime Consultative Organization, as modified by the International Chamber of Shipping. Their development implements an agreement made by the United States when it ratified the Convention of Facilitation of International Maritime Traffic to use standardized international forms in connection with vessel arrivals or departures to the extent that the forms satisfy U.S. legal requirements. The purpose of the new forms is to simplify paperwork without reducing effective Customs control over vessel movements.

T.D. 77-255 provided for the use of the forms any time after October 25, 1977, and for their mandatory use as of September 1, 1978. However, a number of U.S. ocean carriers advised Customs that mandatory use of the forms as of September 1, 1978, would impose a hardship and requested that they be given additional time to comply with the new requirements. After consideration of these requests, by Treasury Decision 78-291, published in the Federal Register on August 18, 1978 (43 F.R. 36621), Customs delayed the effective date for mandatory use of the forms until January 1, 1979.

#### REPORTING OF BILL OF LADING NUMBERS FOR CONTAINERIZED CARGO

Section 4.7a(c)(2), Customs Regulations (19 CFR 4.7a(c)(2)), as amended by T.D. 77-255, provides that: (1) All bills of lading for inward foreign cargo shipped in containers shall be listed in numerical sequence on Customs form 1302; (2) the number of the container which contains the cargo covered by that bill of lading and the container seal number shall be listed opposite the bill of lading number; and (3) the number of any other bill of lading for cargo in that container also shall be listed immediately under the container and seal numbers. Therefore, for containers with merchandise covered by more than one bill of lading number, the same bill of lading numbers must be listed more than once on Customs form 1302.

Because multiple listings of the same bill of lading number impose a burden on carriers without corresponding benefit to Customs, a simplified alternative is being developed to eliminate the need to report bill of lading numbers more than once on Customs form 1302. The alternative procedure, if adopted, will be the subject of an amendment to section 4.7a(c)(2), Customs Regulations, published in the Federal Register and the CUSTOMS BULLETIN in the near future.

## REQUEST FOR FURTHER DELAY IN EFFECTIVE DATE

Customs has been requested, on behalf of an association of U.S. ocean carriers, to delay further, until April 1, 1979, the mandatory date for use of the new forms. The delay is requested to permit consideration of the amendment to section 4.7a(c)(2), Customs Regulations, described above, and to provide carriers additional time to comply with the new requirements.

## DELAY IN MANDATORY EFFECTIVE DATE

After considering this request, Customs is delaying the date for mandatory use of Customs form 1302 and Customs form 1302-A until April 1, 1979. No further extensions of the time for mandatory use of the forms will be granted.

## DRAFTING INFORMATION

The principal author of this document was Mark Jenkins, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: December 21, 1978.

R. E. CHASEN,  
*Commissioner of Customs.*

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(T.D. 79-6)

## Foreign Currencies—Variances From Quarterly Rate

Rates of exchange based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 78-382 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Norway krone:

December 11, 1978----- \$0.185185

Switzerland franc:

December 11, 1978-----	\$0. 590667
December 12, 1978-----	. 589275
December 13, 1978-----	. 586338
December 14, 1978-----	. 592066
December 15, 1978-----	. 593472

(LIQ-3-O:D:E)

Date: December 22, 1978.

BEN L. IRVIN,  
*Acting Director,*  
*Duty Assessment Division.*

# Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza  
New York, N.Y. 10007

*Chief Judge*

Edward D. Re

*Judges*

Paul P. Rao  
Morgan Ford  
Scovel Richardson  
Fredrick Landis

James L. Watson  
Herbert N. Maletz  
Bernard Newman  
Nils A. Boe

*Senior Judge*

Samuel M. Rosenstein

*Clerk*

Joseph E. Lombardi

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## *Customs Decisions*

(C.D. 4781)

WILD HEERBRUGG INSTRUMENTS, INC. v. UNITED STATES

*Motion for rehearing*

Court No. 72-2-00278

Port of New York

[Motion denied]

Dated December 11, 1978

*Barnes, Richardson & Colburn (Richard C. King and Rufus E. Jarman, Jr. of counsel) for the plaintiff.*

*Barbara Allen Babcock, Assistant Attorney General (William F. Atkin, trial attorney), for the defendant.*

RICHARDSON, Judge: In this action the Government moves for a rehearing of the decision in C.D. 4767 decided September 14, 1978, wherein the court held that the imported phototubes were properly classifiable as alternatively claimed under TSUS item 708.80 as mountings for compound optical microscopes. The Government contends that the court overlooked the fact that at the trial the importer abandoned all claims as to phototube numbered 256539, and that as to this phototube the judgment ought at least be modified so as to affirm the liquidated classification of that phototube under TSUS item 708.89.

The Government also contends that the court did not find it necessary to determine whether the phototubes were optical appliances and instruments within the meaning of item 708.89, but that it is necessary for the court to make such a determination as a predicate for determining that the tubes are mountings inasmuch as the terms "Optical appliances and instruments" and the terms "frames and mountings" are mutually exclusive terms. The Government further contends that the terms "frames and mountings" refer to articles which are nonoptical in nature.

The importer opposes the motion in part. The importer argues that all claims as to phototube 256542, and not phototube 256539 as the Government claims, were abandoned at the trial; and the importer does not oppose the Government's motion insofar as this phototube is concerned. As to all other phototubes, the importer argues that the presence of optical elements in an article does not preclude its classification as a mounting.

The threshold question at the trial was not whether claims affecting any of the phototubes had been abandoned. The question was whether a particular phototube was involved in the importations before the court. The colloquy between the court and counsel on the matter dealt with phototube numbered 256542 and not phototube numbered 256539 (R. 27). For the sake of expediency the importer was willing to waive any claims as to phototube 256542, and the Government's posture as manifest in its pleading was that no phototube with that number was imported.

An examination of all invoices supports the Government's pleading allegation. Since no phototube bearing number 256542 was ever imported under the entries at bar, it follows that no classification was ever made as to such a tube under these entries. Consequently, it would be inappropriate for the court to now modify its judgment herein to sustain a nonexistent classification merely because the importer waived any claim as to merchandise which was never imported or classified under the involved entries.



With respect to the other numbered phototubes actually imported and classified, it is implicit in the court's decision in C.D. 4767 that the court regarded the disputed phototubes as being by nature something less than a complete and functional end-use article which the terms "appliances" and "instruments" connote and, hence, that they are not, therefore, "Optical appliances and instruments" within the meaning of the superior heading to item 708.89. Thus, the court said in C.D. 4767, "\*\*\* if the tube is *part* of any instrument \*\*\* it is *part* of the host microscope." (*Italic added.*) And in this posture the court went on in the opinion to conclude "that these phototubes fall squarely within the ambit of the term 'mountings' for compound optical microscopes under item 708.80," it being apparent to the court that a compound optical microscope is a specific optical appliance or instrument.

With respect to the Government's contention that the terms "frames and mountings" refer exclusively to nonoptical articles, one searches its trial brief in vain for any statement indicative of such an argument. In fact, in its trial brief the Government argued to the contrary in its alternative posture. (See p. 36, defendant's brief, where it states: "\*\*\* if the phototubes are not properly classified as optical appliances and instruments under item 708.89, they are properly classifiable as frames and mountings for compound optical microscopes under item 708.80, TSUS.") Also, arguments raised for the first time on rehearing are not properly before the court for consideration when prior opportunity existed during trial for the moving party to have adequately made its position known. *Lunham v. United States*, 1 Ct. Cust. Appls. 320, T.D. 31409 (1911).

For the reasons stated, defendant's motion for rehearing is denied in all respects.

# Decisions of the United States Customs Court

## *Abstracts Abstracted Protest Decisions*

DEPARTMENT OF THE TREASURY, December 18, 1978.

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,  
*Commissioner of Customs.*

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate			
P78/153	Ford, J. December 11, 1978	Clark Equipment Com- pany	77-2-00283	Items 847.00/ 692.35 5.5%	Item 692.30 Free of duty		Norman G. Jensen, Inc. v. U.S. (C.D. 4634, aff'd C.A.D. 1183)	Buffalo Log skidders imported from Canada incorporat- ing certain parts of U.S. manufacture assembled in Canada

P78/151	Ford, J. December 12, 1978	Norman G. Jensen, Inc.	74-3-00849	Item 692.35 5.5% Item 692.16 5% Item 737.90 17.5%	Item 692.30 Free of duty  Item 734.54 18%  Item 791.75 6% Dutiable as en- tireties on basis of export value; said value is in- voice unit price	U.S. v. Norman G. Jensen, Inc. (C.A.D. 1183)	Grand Portage (Duluth) Skidder tractors
P78/155	Maletz, J. December 12, 1978	F. J. Strauss Co., Inc.	73-3-00784, etc.	Item 382.58 37.5¢ per lb. + 20% (blouses and pants)		Mego Corp. v. U.S. (C.D. 404)	New York Item No. 6/400 baseball gloves
P78/156	Maletz, J. December 14, 1978	Shayne Knitwear, Inc.	75-3-00692	Item 791.75 6% (jackets)		J. C. Penney Purchasing Corporation v. U.S. (C.D. 467)	New York, Ladies' 3-piece suits; en- tireties

# Decisions of the United States Customs Court

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## *Abstracts Abstracted Reappraisal Decisions*

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R78/220	Newman, J. December 11, 1978	Ernest Lowenstein, Inc.	R64/12716, etc.	Export value	Appraised values less 15%	U.S. v. Ernest Lowenstein, Inc. (A.R.D. 325)	New York Glass stones, pendants, beads, etc.
R78/220	Bee, J. December 11, 1978	Pacific Marine Schwabacher	76-12-02692	Antidumping duties	Merchandise not subject to antidumping duties; protest sustained; district director shall refund assessed antidumping duties	Judgment on the pleadings	Seattle Fish netting
R78/221	Re, C. J. December 12, 1978	C. J. Tower & Sons of Buffalo, Inc.	R69/484	Cost of production	As set forth in decision and judgment in column designated "Total Cost of Production of Basic Automobiles" at amounts in Canadian currency, including value of U.S. components as appraised; value of optional equipment was value found by appraising official as reflected on the invoices	Agreed statement of facts	Buffalo Studebaker automobiles and optional equipment

CUSTOMS

	Ford, J. December 12, 1978	Mitsui & Co., Ltd.....	R67/1395, etc.	United States value.....	Invoiced unit prices, net packed, plus 50%	Agreed statement of facts	Chicago Electron receiving tubes
R78/232	Newman, J. December 13, 1978	Ernest Lowenstein, Inc.	R63/14218, etc.	Export value	Appraised values less 15%	U.S. v. Ernest Lowen- stein, Inc. (A.R.D. 325)	New York Glass stones, pen- dants, beads, etc.
R78/233	Newman, J. December 13, 1978	Ernest Lowenstein, Inc.	R64/4168, etc.	Export value	Invoiced unit prices less 2.845%	U.S. v. Ernest Lowen- stein, Inc. (A.R.D. 325)	New York Glass stones, pen- dants, beads, etc.
R78/234	Newman, J. December 13, 1978	Ernest Lowenstein, Inc.	R64/11438, etc.	Export value	Appraised values less 15%	U.S. v. Ernest Lowen- stein, Inc. (A.R.D. 325)	New York Glass stones, pen- dants, beads, etc.
R78/235	Newman, J. December 13, 1978	Ernest Lowenstein, Inc.	R63/7776, etc.	Export value	Appraised values less 15%	U.S. v. Ernest Lowen- stein, Inc. (A.R.D. 325)	New York Glass stones, pen- dants, beads, etc.
R78/236	Newman, J. December 14, 1978	Ernest Lowenstein, Inc.	R63/10639, etc.	Export value	Appraised values less 15%	U.S. v. Ernest Lowen- stein, Inc. (A.R.D. 325)	New York Glass stones, pen- dants, beads, etc.
R78/237	Newman, J. December 14, 1978	Ernest Lowenstein, Inc.	R64/6306, etc.	Export value	Appraised values less 15%	U.S. v. Ernest Lowen- stein, Inc. (A.R.D. 325)	New York Glass stones, pen- dants, beads, etc.
R78/238	Newman, J. December 14, 1978	Ernest Lowenstein, Inc.					

**Appeals to United States Court of Customs  
and Patent Appeals**

**APPEAL 79-8.—United States v. Reliable Chemical Company.—PRO-  
TEST FILED PRIOR TO OFFICIAL NOTICE OF LIQUIDATION—  
MOTION TO DISMISS FOR LACK OF JURISDICTION—MOTION TO  
SUSPEND.—Appeal from C.R.D. 78-11.**

In this case plaintiff-appellee moved to suspend the action under a proposed test case. Defendant-appellant cross-moved to dismiss the action for lack of jurisdiction on the ground that the protest was prematurely filed. The protest was filed on July 22, 1975, and the bulletin notice of liquidation was made on July 25, 1975. However, defendant sends out a notice prior to the date of the bulletin notice which it characterizes as a "courtesy" notice, and plaintiff was in possession of this notice (form 4333-A) when it filed its protest. The Customs court viewed this notice as being a notice of liquidation sufficient to be protested under 19 U.S.C. § 1514 even though it was not the notice established by regulation in 19 CFR § 159.9 (1975) pursuant to 19 U.S.C. § 1500. Defendant's motion to dismiss the action was denied; plaintiff's motion to suspend the action under court No. 73-10-02963 was denied. (The motion to designate court No. 73-10-02963 as a test case was also denied.) Defendant's motion for rehearing was denied; defendant was permitted to proceed in the dispute by way of an interlocutory appeal by order of the Customs court dated October 11, 1978. Defendant's petition seeking leave to appeal orders of the Customs court dated July 26, 1978 (C.R.D. 78-11) was granted by the Court of Customs and Patent Appeals on November 8, 1978.

It is claimed that the Customs court erred in failing to hold that the only legal date of liquidation was the date that appeared on the bulletin notice of liquidation which was posted at the port of entry on July 25, 1975; in finding and holding that a courtesy notice of liquidation, which is mailed to the importer prior to the actual and legal notice of liquidation at the port of entry, constitutes notice of liquidation within the intentment of 19 U.S.C. §§ 1500 and 1514 and 19 CFR § 159.9 (1975); in finding and holding that the protest encompassed by this action was not shown to be prematurely filed, even though it was filed prior to the date of the posted bulletin notice of liquidation, as it was filed after the mailing and/or receipt of the

courtesy notice of liquidation; in failing to dismiss a protest prior to liquidation, in violation of the language and intent of 19 U.S.C. §§ 1500 and 1514, and the jurisdiction predicate of 28 U.S.C. § 1582.

**APPEAL 79-9.—United States v. Exxon Corporation, Chevron Oil Co.—PETROLEUM DERIVATIVE KNOWN AS MOTOR ALKYLATE—MOTOR FUEL—NAPHTHA—TSUS. Appeal from C.D. 4772.**

In this case a petroleum derivative known as motor alkylate, a naphtha used as a blending stock in the manufacture of certain motor fuel, was classified as motor fuel under item 475.25, Tariff Schedules of the United States, and assessed with duty at the rate of 1.25 cents per gallon. The Customs court held that the merchandise was properly classifiable as claimed by plaintiffs-appellees as naphthas, derived from petroleum, shale oil, natural gas, or combinations thereof (except motor fuel), under item 475.35 and dutiable at 0.25 cent per gallon.

It is claimed that the Customs court erred in finding and holding that the imported merchandise is properly classifiable under item 475.35, *supra*; in not finding and holding that the merchandise is properly classifiable under item 475.25, *supra*.

# International Trade Commission Notices

*Investigations by the United States International Trade Commission*

## DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs Officers and others concerned.

R. E. CHASEN,  
*Commissioner of Customs.*

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[TA-203-5]

### Stainless Steel and Alloy Tool Steel

#### Notice of investigation and hearing

*Investigation instituted.*—Following receipt of a petition on November 30, 1978, filed by the Tool and Stainless Steel Industry Committee and the United Steelworkers of America, AFL-CIO, the U.S. International Trade Commission on December 11, 1978, instituted an investigation under section 203 (i)(2) and (i)(3) of the Trade Act of 1974 for the purpose of gathering information in order that it might advise the President of its judgment as to the probable economic effect on the domestic industry concerned of the termination of import relief presently in effect with respect to the stainless steel and alloy tool steel provided for in items 923.20 through 923.26, inclusive, of the appendix to the Tariff Schedules of the United States. Import relief presently in effect with respect to such articles is scheduled to terminate at the close of June 13, 1979, unless extended by the President. The relief is provided for in Proclamation 4445 of June 11, 1976, (41 F.R. 24101), as modified by Proclamation 4477 of November 16, 1976 (41 F.R. 50960), Proclamation 4509 of June 15, 1977 (42 F.R. 30829), and Proclamation 4559 of April 5, 1978 (43 F.R. 14433).



*Public hearing ordered.*—A public hearing in connection with this investigation will be held in Washington, D.C., at 10. a.m., e.s.t., on Tuesday, March 6, 1979, in the hearing room, U.S. International Trade Commission Building, 701 E Street NW. Requests for appearances at the hearing should be received in writing by the Secretary to the Commission at his office in Washington no later than noon on March 1, 1979.

*Suggested prehearing procedures.*—To facilitate the hearing process, it is requested that persons wishing to appear at the hearing submit prehearing briefs enumerating and discussing the issues which they wish to raise at the hearing. Such prehearing briefs should be submitted to the Secretary of the Commission no later than the close of business Monday, February 26, 1979. The Secretary will make copies of such briefs available to the public. While this does not prohibit submission of prepared statements in accordance with section 201.12(d) of the Commission's rules of practice and procedure (19 CFR 201.12(d)), it would be unnecessary to submit such a statement if a prehearing brief is submitted instead. Any such statements will, of course, be made a part of the transcript. Oral presentations, however, should, to the extent possible, be limited to issues raised in the prehearing briefs.

Prehearing conferences will be held on Tuesday, February 12, 1979, at 10 a.m. and Friday, March 2, 1979, at 10 a.m. in room 117 of the U.S. International Trade Commission Building.

Persons not represented by counsel or public officials who have relevant matters to present may give testimony without regard to the suggested prehearing procedures outlined above.

*Inspection of petition.*—The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission, and at the New York City office of the U.S. International Trade Commission located at 6 World Trade Center.

By order of the Commission:

Issued: December 19, 1978.

KENNETH R. MASON,  
*Secretary.*

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(AA1921-192)

Silicon Metal From Canada

Notice of investigation and hearing

Having received advice from the Department of the Treasury on December 5, 1978, that silicon metal from Canada is being, or is

likely to be, sold at less than fair value, the U.S. International Trade Commission, on December 15, 1978, instituted investigation No. AA1921-192 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being, or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. For the purposes of its determination concerning sales at less than fair value, the Treasury Department defined "silicon metal" as silicon metal, unwrought, containing by weight not over 99.7 percent pure silicon; and alloys of silicon metal, unwrought, containing by weight 96 percent or more but less than 99 percent silicon.

*Hearing.*—A public hearing in connection with the investigation will be held on Tuesday, January 23, 1979, in the Commission's hearing room, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436, beginning at 10 a.m., e.s.t. All persons shall have the right to appear in person or by counsel, to present evidence and to be heard. Requests to appear at the public hearing, or to intervene under the provisions of section 201(d) of the Antidumping Act, 1921, shall be filed with the Secretary of the Commission, in writing, not later than noon, Tuesday, January 16, 1979.

By order of the Commission.

Issued: December 18, 1978.

KENNETH R. MASON,  
*Secretary.*

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## U.S. Customs Service

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## Customs Court

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WASHINGTON, D.C. 20229

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